

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**FIRST APPEAL No. 651 of 2003****For Approval and Signature:****HONOURABLE MR.JUSTICE M.S.SHAH****AND****HONOURABLE MR.JUSTICE AKIL KURESHI**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?5 Whether it is to be circulated to the civil judge
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SUNITA ROOCHAND - Appellant(s)**Versus****ODHAVNIBHAI @ BHARATBHAI DAHYABHAI. TH' RAJESH. K.
LALWANI. & 5 - Defendant(s)**

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Appearance :

MR TS NANAVALI for Appellant(s) : 1, 1.2.1, 1.2.2, 1.2.3, 1.2.4,1.2.5

NOTICE SERVED for Defendant(s) : 1 - 2.

MR PV NANAVALI for Defendant(s) : 3,

MR VIBHUTI NANAVALI for Defendant(s) : 3,

NOTICE NOT RECD BACK for Defendant(s) : 4,

NOTICE UNSERVED for Defendant(s) : 5,

MR HEMANT S SHAH for Defendant(s) : 6,

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH**and****HONOURABLE MR.JUSTICE AKIL KURESHI****Date : 28/02/2007****ORAL JUDGMENT****(Per : HONOURABLE MR.JUSTICE AKIL KURESHI)**

This appeal arises out of an order dated 30.11.2002 passed by the Motor Accident Claims Tribunal (Main), Sabarkantha at Himmatnagar in Review Application No. 3 of 2001 in MAC Petition No. 483 of 1990.

2. Brief facts leading to the appeal are as follows :-

One Rupchand Motiram Radhani received bodily injuries in a vehicular accident which took place on 23.3.1990. He, therefore, filed claim petition being MAC Petition No. 483 of 1990 before the Claims Tribunal seeking compensation for bodily injuries that he received in the said accident.

Said Rupchand Motiram, however, expired on 8.9.1997. The Claims Tribunal disposed of his claim petition alongwith other Claim Petition No. 348 of 1990 filed by another injured person who had received injuries in the same accident by a judgment dated 31.12.1997.

Since the fact that claimant Shri Rupchand had died on 8.9.1997 was not brought on record before the Tribunal, the Tribunal dismissed his claim petition on the ground that no evidence was led by or on behalf of the claimant. The Tribunal recorded that the claimant had not produced any documentary evidence regarding injuries or expenditure and had not deposed on oath before the Tribunal. Notices

were issued by the advocate of the claimant. Under the circumstances, the Tribunal found that it had no other alternative but to dismiss the claim petition.

The heirs of deceased Rupchand Motiram sometimes thereafter filed Review Application No. 3 of 2001 seeking setting aside of the dismissal of the claim petition. Since there was some delay in filing such application, they also sought condonation thereof. The Tribunal after bi-parte hearing condoned the delay and thereafter took up the review application for hearing.

This review application, however, came to be dismissed by impugned order dated 30.11.2002.

It is this order that the heirs of deceased Rupchand Motiram have challenged in this appeal.

3. As noted earlier, original claimant Rupchand Motiram expired on 8.9.1997 whereas his claim petition came to be dismissed for non prosecution on 31.12.1997. The judgment dated 31.12.1997, therefore, was an order against a dead person. On this ground itself, the order would suffer from legal lacuna. Quite apart from this, we find that the Tribunal ought not to have rejected the review application filed by the appellants herein.

4. The appellants had convinced the Tribunal to condone the delay. Once that was done, they had

sufficient reason to be brought on record and the order of dismissal of the claim petition for want of prosecution ought to have been recalled.

5. The Claims Tribunal, however, observed that till his death the original claimant remained bedridden has hardly any relevance in deciding the review application. It was observed that taking this allegation as true, also it had hardly any bearing in deciding the application. The Tribunal further observed that the heavy burden lies on the party, when party seeks to invoke review jurisdiction since the scope of review is fairly limited. The Tribunal eventually rejected the review application with the finding that the applicants i.e. the present appellants had approached the Tribunal after some delay.

6. We are unable to appreciate the reasoning adopted by the Tribunal in rejecting the application.

7. The original claimant having received serious injuries waited patiently for a number of years to receive benefits of his claim petition. Unfortunately, he expired before his claim petition could be decided. On his behalf it was conveyed to the Tribunal that he remained bedridden since his whole lower part of the body had become paraplegic. The Tribunal found that this is not relevant factor to set aside the order dismissing the claim petition for want of prosecution.

The Tribunal also was, in our opinion, not justified in placing heavy burden on the applicants treating the application as a review application. Though titled as such, it was only an application seeking setting aside of an order dismissing the claim petition for want of prosecution. The applicants were not seeking review of a judgment rendered on merits. We feel the issue could have been treated with little more sensitivity. Having once allowed the delay condonation application, it was, therefore, not open for the Tribunal to reject the review application on the ground that the applicants had not filed such an application for review earlier.

8. Considering all these aspects of the matter, the impugned order cannot sustain. The same is set aside. The proceedings are remanded to the Claims Tribunal for fresh consideration on merits after giving an opportunity to both the sides to lead evidence and to make submissions. It is expected that such remanded proceedings shall be concluded as expeditiously as possible and preferably within six months from the date of receipt of a copy of this order.

9. Learned advocate Shri TS Nanavati for the appellants, learned advocate Shri Vibhuti Nanavati for opponent No. 3 – United India Insurance Co. Ltd. and learned advocate Shri Hemant Shah for opponent

No.6 – New India Assurance Co. Ltd. agreed that the respective parties will report before the Claims Tribunal on 28.3.2007. It would, therefore, be not necessary for the Tribunal to issue notice to these parties regarding further proceedings. To complete the formalities, it would be open for the appellants herein to file an appropriate application for bringing them on record before the Claims Tribunal.

10. With these directions, the appeal is allowed and is disposed of.

The Registry shall send down the writ of this order to the Tribunal expeditiously.

[M.S. SHAH, J.]

[AKIL KURESHI, J.]

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